



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-146—National and state banks, mutual savings banks, savings and loan associations and other financial institutions.**

Date last adopted: **March 15, 1983**

Reviewer: **Ed Ratcliffe**

Date review completed: **November 9, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If “YES”, provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an “x” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

- 1. Explain the goal(s) and purpose(s) of the document: The rule explains the application of business and occupation (B&O), retail sales, and use tax to banking and other financial businesses that make loans. It specifically discusses the B&O tax deductions from gross income for dividends received by a parent corporation from its subsidiary, interest from first mortgage loans, and interest from government bonds or loans directly made to federal, state or local governments.**

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)





Please explain.

This rule aids financial businesses making loans when determining their state tax liability. It is needed because of the nature of business engaged in by lending institutions and the deductions that specifically arise because of the transactions engaged in by these businesses.

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Information from the following interpretive statements should be considered for incorporation into Rule 146 (see also the ancillary document review checklists for these documents):

- **ETA 460.04.146—Deductibility of Interest Received on Investments or Loans Primarily Secured by First Mortgages or Trust Deeds on Nontransient Residential Properties. This ETA explains the deductibility of interest earned on loans secured**



by 1st mortgages or trust deeds on properties that: 1) Have a residence but are not zoned for residential use; and 2) Are used for both nontransient and business purposes.

- **ETA 461.04.146—Amounts Collected by a Mortgagee to Cover Insurance Premiums and Real Estate Taxes Owed by a Mortgagor.** This advisory explains that amounts received and held in trust by a mortgagor from the landowner for insurance and real estate taxes are not gross income to the mortgagor.
- **ETA 462.04.146—Taxability of Interest From Loans Secured by Undeveloped Land.** This document explains that interest on loans secured by undeveloped land with no commitment for improvement does not qualify for the interest deduction on loans secured by nontransient residential properties.
- **ETA 463.04.146—Taxability of Interest from Participation Loans.** This explains that interest collected on participation loans for the institution purchasing the participation is not gross income of the collecting institution if the purchaser can sell or assign its participation in the loan.
- **ETA 571.04.146/109—Taxability of Investment Income.** This advisory explains that a two-part test is used to determine whether a taxpayer is a “financial business.” The first step is whether the investment income exceeds 5% of the taxpayer’s gross income. If so, the second step is to determine whether the taxpayer’s business is comparable to “banking, loan or security businesses.”
- **ETA 575.04.111—Loan Application Deposits.** This document clarifies when loan application deposits may be excluded from the measure of B&O tax as an advance under WAC 458-20-111.

The following interpretive statements can be repealed (see also the ancillary document review checklists for these documents):

- **AD 8146.1—Loan set-up fees.** This document explains the application of tax to loan set-up fees. Subsequent published determinations of the Department address the treatment of loan set-up/origination fees.
- **AD 8146.1A—Audits of Banks and Other Financial Institutions.** This document provides direction regarding the deduction for first mortgage interest as it applies to mortgage-backed securities. Subsequent published determinations of the Department address the treatment of interest for mortgage backed securities (e.g., Det. 89-460, 8 WTD 241 (1989)).
- **AD 8146.2—Stripped Mortgage Pass-Throughs.** This directive discusses the taxability of interest received from “stripped mortgage pass-throughs.” Subsequent published determinations of the Department address the treatment of interest in enough detail to determine the appropriate treatment for stripped mortgage pass-throughs. See, Det. 98-328, 18 WTD 46 (1999).
- **AD 8146.3—Gains and Losses on Futures Contracts.** This explains that losses from futures contracts should not be used to offset gains. This audit directive is incorrect. Det. 90-63, 9 WTD 107 (1990) provides sufficient information on this subject and explains that futures contract gains may be offset by losses.
- **AD 8146.5—Interest From Sales of Real Estate.** This directive explains that the deduction for interest received on loans secured by a first mortgage or trust deed on nontransient residential property may not be claimed for interest received on real



estate sales contracts. This is accurate, but the document is not needed. This is sufficiently addressed in subsequent published determinations of the Department (e.g., Det. 93-023, 12 WTD 575 (1993)).

- **ETA 459.04.146—Interest Received on Direct Obligations of the Federal Government.** This advisory notes that Rule 146 explains that a deduction is available for interest received on direct obligations of the federal government. It then provides a limited list of federal agencies/instrumentalities. There is no longer a need for the Department to provide and/or maintain this partial list of federal agencies/instrumentalities.

Information from the following court decisions, BTA decisions, and administrative decisions (WTDs) should be considered for incorporation into this rule:

- **Rainier Bancorporation v. Revenue**, 96 Wn.2d 669, 672, 673, 638 P.2d 575 (1982). Bank holding company making loans to subsidiaries out of more than just surplus funds is “financial business.”
- **Simpson Investment Company v. Dept. of Revenue**, 67630-5 (2000) Simpson, a holding company for multiple subsidiaries was held a “financial business” and could not deduct its “investment income” under RCW 82.04.4281.
- **Det. 98-328, 18 WTD 46 (1999)**, Describes a three part test to determine if the funds paid represent interest.
- **Det. 90-63, 9 WTD 107 (1990)** provides that futures contract gains may be offset by losses.
- **Det. 87-208, 3 WTD 245 (1987)**, Interest upon first UCC lien for manufactured home after affixed to its permanent site qualifies for first mortgage interest deduction.
- **Det. 88-255, 6 WTD 123 (1988)**, Loan origination fees representing yield adjustment for interest on first mortgage can be deducted as interest. Loan origination fees for services performed cannot be deducted from gross income. Modified by 18 WTD 46 (1999)(loan origination fees based upon the first mortgage loan amount represent interest even though not paid until loan is sold.) Gains earned from the assignment of a first mortgage do not qualify for the interest deduction.
- **Det. 89-280, 7 WTD 375 (1989)**, Loan origination fees representing yield adjustment for interest on first mortgage can be deducted as interest. See, 18 WTD 46 (1999)(loan origination fees based upon first mortgage loan amount represents interest.) Nonrefundable loan commitment fees to hold terms of loan for a stated period do not represent deductible first mortgage interest.
- **Det. 89-460, 8 WTD 241 (1989)**, Interest amounts paid on participation in mortgage backed securities represent deductible first mortgage interest.
- **Det. 89-474, 8 WTD 259 (1989)**, Premium paid upon sale of first mortgage represents trading gain and not deductible interest.
- **Det. 89-461, 11 WTD 21 (1990)**, Gain on sale of first mortgage not deductible as interest. Loan processing deposits held for third party services included in income unless proof presented that service providers were contracting with bank’s clients. Sales amounts representing interest accrued on purchased first mortgages prior to the sales date are deductible as first mortgage interest.
- **Det. 92-377, 13 WTD 222 (1994)**, Interest on loan to underwrite first mortgages and secured by the notes taken is not deductible as interest on first mortgages. Housing



bonds are deductible if trustee issuing bond holds first mortgages and has power to foreclose on these mortgages on behalf of the bondholders.

- Det. 99-241, 19 WTD 295 (1999), Mortgage broker must bear risk of loss from loan to claim interest deduction. When loan is made in bank's name financing the mortgage or the mortgager is required to immediately assign the loan to the bank, the broker cannot take an interest deduction for any loan origination fees paid.
- Det. 89-370, 8 WTD 111 (1989), Municipal corporation for government interest deduction is to be read liberally to include taxing districts as well as cities.
- Det. 89-476, 8 WTD 271 (1989), Interest on federal securities (or participation in them) is exempt from B&O tax even when paid through federal reserve bank to participants.
- Det. 93-191, 13 WTD 344 (1994), points paid by student on student loan (loan fee applied against first interest payment) is not direct obligation of US government and not exempt.
- Det. 90-63, 9 WTD 107 (1990), bank interest rate futures trading/interest swapping for interest rate hedge is to be treated as security trading with gains and losses from such activity averaged each month for reporting gain upon such activities.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
	X	Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
X		Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **The rule is clear and well organized. It could be more effective if it was expanded to deal with certain recurring situations (i.e. stripped mortgage interest, loan origination fees, etc.), but overall the rule provides good information to lending institutions.**

The rule does contain some incorrect citations. It cites to RCW 82.04.4291 for the first mortgage interest deduction when the correct citation is RCW 82.04.4292. The rule cites to RCW 82.04.4292 for the government interest deduction when the correct citation is RCW 82.04.4293. The rule also provides outdated information about tax registration (e.g., no mention of the Master business Licensing Application by name and the citation of a \$15 fee for tax registration that no longer exists).

The exemption under RCW 82.04.315 for international banking facilities (enacted in 1982) should be incorporated into this rule when it is next revised.

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **RCW 82.32.300 provides the department with authority to make rules necessary to implement RCW chapters 82.04 (B&O tax), 82.08 (retail sales tax), and 82.12 (use tax). This rule aids in implementing these taxes by explaining how these taxes apply to lending institutions and outlining common B&O tax deductions for them. The rule is consistent with the statutes it was designed to implement, though it does not recognize the amendment to RCW 82.32.030 (Registration certificates-Threshold levels) that eliminated a previous \$15 tax registration fee.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The department has the exclusive authority for implementing these taxes.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that does not impose any administrative burdens on taxpayers that are not already imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.



YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain. **The rule currently results in equitable treatment.**



9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following apply to lending institutions:**

- **RCW 82.04.050 “Sale at retail,” “retail sale;”**
- **RCW 82.04.080 “Gross income of the business;”**
- **RCW 82.04.220 Business and occupation tax imposed;**
- **RCW 82.04.290 Tax on international investment management services or other business or service activities;**
- **RCW 82.04.390 Exclusion of gross proceeds from sales or rentals of real estate;**
- **RCW 82.04.4281 Deductions-Investments-Dividends from subsidiary corporations;**
- **RCW 82.04.4292 Deductions-Interest on investments or loans secured by mortgages or deeds of trust;**
- **RCW 82.04.4293 Deductions-Interest on obligations of the state, its political subdivisions, and municipal corporations.**
- **RCW 82.08.020 Tax imposed-Retail sales-Retail car rental;**
- **RCW 82.12.020 Use tax imposed;**
- **RCW 82.32.030 Registration certificates-Threshold levels; and**
- **RCW 82.32.045 Taxes-When due and payable-Reporting periods-Verified annual returns-Relief from filing requirements; and**
- **RCW 82.32.090 Late payment-Disregard of written instructions-Evasion-Penalties.**

Ancillary Documents (i.e., ETAs, PTBs, and Ads):

- **AD 8146.1—Loan set-up fees**
- **AD 8146.1A—Audits of Banks and Other Financial Institutions**
- **AD 8146.2—Stripped Mortgage Pass-Throughs**
- **AD 8146.3—Gains and Losses on Futures Contracts**
- **AD 8146.5—Interest From Sales of Real Estate**
- **ETA 459.04.146—Interest Received on Direct Obligations of the Federal Government**
- **ETA 460.04.146—Deductibility of Interest Received on Investments or Loans Primarily Secured by First Mortgages or Trust Deeds on Nontransient Residential Properties**
- **ETA 461.04.146—Amounts Collected by a Mortgagee to Cover Insurance Premiums and Real Estate Taxes Owed by a Mortgagor**
- **ETA 462.04.146—Taxability of Interest From Loans Secured by Undeveloped Land**
- **ETA 463.04.146—Taxability of Interest from Participation Loans**
- **ETA 571.04.146/109—Taxability of Investment Income**
- **ETA 575.04.111—Loan Application Deposits**

Also considered (no ancillary document review checklist completed):

- **ETA 574.08.198—Financial Institutions Incurring Bad Debts on Contract Assignments**



Court Decisions:

- **Clifford v. State**, 70 Wn.2d 4, 469 P.2d 549 (1970), Interest upon real estate contracts is subject to B&O tax. The deferred selling of real estate is not the same as engaging in investment activities like a bank.
- **John H. Sellen Construction v. Department of Revenue**, 87 Wn.2d 878, 882, 558 P.2d 1342 (1976), Allowed deduction of incidental investments of surplus funds by businesses, including interest from loans to their subsidiaries. Distinguished itself from Clifford and stated that the “decision did not concern RCW 82.04.430 or the words “financial businesses.”
- **Rainier Bancorporation v. Revenue**, 96 Wn.2d 669, 672, 673, 638 P.2d 575 (1982). Bank holding company making loans to subsidiaries out of more than just surplus funds is “financial business.”
- **O’Leary v. Dept. of Revenue**, 105 Wn.2d 679, 717 P.2d 273 (1986), Real estate developer cannot deduct interest as “investment” income, no need to make a determination about status as financial business.
- **Browning v. Dept. of Revenue**, 47 Wn. App. 55, 733 P.2d 594 (1987) Real estate developer cannot deduct interest as investment income.

Board of Tax Appeals Decisions (BTAs):

- **Detlefson v. DOR**, BTA 84-38 (1985), Interest earned by developer on real estate contracts is not “investment.”
- **Simpson Timber Company v. DOR**, BTA 30192, 1 WTD 445 (1986), Interest on two loans to Canadian affiliates were not deductible. BTA found that Simpson Timber Company is engaged in financial business because it makes regular and recurring loans to its subsidiaries and therefore cannot isolate loans to two subsidiaries for exemption under the provisions of RCW 82.04.4281.
- **Keyes v. DOR**, BTA 31630, 2 WTD 305 (1986), Interest paid on real estate contracts for condominium/slip moorage was as result of business activity and not investment.
- **Lane & Lane v. DOR**, BTA 46189 (1996), Interest paid on two sales of real estate by business engaged in leasing and selling real estate within Washington was taxable.

Administrative Decisions (e.g., WTDs):

- **Det. 86-237**, 1 WTD 115 (1986), Manufacturer loaning surplus funds to subsidiaries was not a financial business like a bank. Analysis has been overruled in part by **Det. 93-269ER**, 14 WTD 153 (1995).
- **Det. 86-267**, 1 WTD 241 (1986), B&O tax described for assignment of loan to purchaser located outside of Washington when loan servicing is done by originating bank within Washington. Gain from assignment of loan subject to tax, not entire proceeds received for assignment of loan. Fees for servicing loan are subject to tax (and are not considered interest payments). Interest received on loan for out of state purchaser is not subject to tax as the interest income is for intangible right owned outside the state.



- **Det. 86-309, 2 WTD 83 (1986),** Manufacturer regularly making loans to subsidiaries was engaged in “financial business,” similar to bank even though interest earned was under 5%. Analysis overruled in part by Det. 93-269ER, 14 WTD 153 (1995).
- **Det. 85-117B, 2 WTD 109 (1986),** Interest accrued prior to establishing exempt international banking facilities account subject to B&O tax even though transferred into international banking facilities account when received (But see, 12 WTD 447, that allows retroactive corrections to IBF accounts.) Interest income from reverse repurchase agreement upon default of assigned loan is subject to B&O tax. Interest earned on loans to PDAs created by cities are not entitled to government interest deduction. (Contra, 8 WTD 111, municipal corporation includes quasi-municipal organizations like PDAs). Gains from trading US Securities are not deductible as interest received on direct obligations of the US government (31 USC 3124(a)). Amounts derived from interest rate swaps/future contracts are included in income despite hedging motive. (See, Det. 90-63, 9 WTD 107 (1990) only gains offset by losses from such transactions are reported)
- **Det. 87-208, 3 WTD 245 (1987),** Interest upon first UCC lien for manufactured home after affixed to its permanent site qualifies for first mortgage interest deduction.
- **Det. 87-346, 4 WTD 267 (1987),** Hotel making loans to employees treated as financial business – any business lending results in financial business. Analysis has been overruled by Det. 93-269ER, 14 WTD 153 (1995).
- **Det. 86-309A, 4 WTD 341 (1987),** The centralized management of corporate funds between a parent corporation and its wholly owned subsidiary companies constitutes the "use of money as such" by a person not otherwise engaged in a "financial business." Booked amounts that represent interest expense connected with such established money management activities, when paid, are exempt of B&O tax.
- **Det. 88-3, 4 WTD 415 (1987),** Interest on real estate contracts by business selling real estate is not deductible as an investment.
- **Det. 88-169, 5 WTD 257 (1988),** Developer’s interest earned on real estate contracts was part of financial business. Two loans that were not on property developed by taxpayer were mere investments. Analysis has been overruled by Det. 93-269ER, 14 WTD 153 (1995).
- **Det. 88-186, 5 WTD 319 (1988),** Insurance company making lending regularly to affiliates is taxable upon interest earned as “financial business.” Analysis has been overruled by Det. 93-269ER, 14 WTD 153 (1995).
- **Det. 88-246, 6 WTD 89 (1988),** Manufacturer making regular recurrent loans out of surplus funds to subsidiaries is engaged in lending business and interest is taxable. Analysis has been overruled by Det. 93-269ER, 14 WTD 153 (1995).
- **Det. 88-255, 6 WTD 123 (1988),** Loan origination fees representing yield adjustment for interest on first mortgage can be deducted as interest. Loan origination fees for services performed cannot be deducted from gross income. Modified by 18 WTD 46 (1999)(loan origination fees based upon the first mortgage loan amount represent interest even though not paid until loan is sold). Gains earned from the assignment of a first mortgage does not qualify for the interest deduction.
- **Det. 89-146, 7 WTD 257 (1989),** Developer cannot deduct interest on first mortgages it holds because the transaction was deferred payment on sold realty, not a loan of money, and the taxpayer is not engaged in a “financial business.”



- Det. 89-280, 7 WTD 375 (1989), Loan origination fees representing yield adjustment for interest on first mortgage can be deducted as interest. See, 18 WTD 46 (1999)(loan origination fees based upon first mortgage loan amount represents interest). Nonrefundable loan commitment fees to hold terms of loan for a stated period do not represent deductible first mortgage interest.
- Det. 89-370, 8 WTD 111 (1989), Municipal corporation for government interest deduction is to be read liberally to include taxing districts as well as cities.
- Det. 89-445, 8 WTD 181 (1989), Gain received on sale of mortgage-backed security is not deductible as first mortgage interest.
- Det. 89-452, 8 WTD 209 (1989), Amounts received as service-release premiums are gains and not deductible as interest. Overruled in part by Det. 98-218, 18 WTD 46 (1999).
- Det. 89-460, 8 WTD 241 (1989), Interest amounts paid on participation in mortgage-backed securities represent deductible first mortgage interest.
- Det. 89-474, 8 WTD 259 (1989), Premium paid upon sale of first mortgage represents trading gain and not deductible interest.
- Det. 89-476, 8 WTD 271 (1989), Interest on federal securities (or participation in them) is exempt from B&O tax even when paid through federal reserve bank to participants.
- Det. 89-489, 8 WTD 379 (1989), income from banker's acceptance is difference between the face amount of the acceptance and the amount dispersed to the drawer.
- Det. 90-52, 9 WTD 85 (1990), business primarily investing in land development and lending to these land development ventures is engaged in a "financial business."

The following determinations were modified to some degree by Det. 93-269ER, 14 WTD 153 (1995).

- Det. 90-63, 9 WTD 107 (1990), bank interest rate futures trading/interest swapping for interest rate hedge is to be treated as security trading with gains and losses from such activity averaged each month for reporting gain upon such activities.
- Det. 90-95, 9 WTD 189 (1990), Loan processing costs for credit reports, title insurance, and property appraisals are not excludable under Rule 111 when the bank is liable for paying those costs.
- Det. 90-124, 9 WTD 259 (1990), Developer/Land management company is taxable on interest earned from loans made on a regular basis to subsidiaries. Analysis has been overruled by Det. 93-269ER, 14 WTD 153 (1995).
- Det. 90-113, 9 WTD 276-1 (1990), Interest collected by loan originator on assigned loan is not subject to tax by collecting bank.
- Det. 90-141, 9 WTD 280-29 (1990), Retained interest upon assigned first mortgage can be deducted from gross income. Overruled by Det. 98-218, 18 WTD 46 (1999).
- Det. 90-288, 10 WTD 314 (1990) Interest received on bond secured by mortgage backed securities is not deductible as bond is readily tradable investment instrument rather than qualifying mortgage.
- Det. 80-121, 11 WTD 1 (1990), Interest received on second mortgage not deductible.
- Det. 89-461, 11 WTD 21 (1990), Gain on sale of first mortgage not deductible as interest. Loan processing deposits held for third party services included in income



unless bank presents proof that service providers were contracting with bank's clients. Sales amounts representing interest accrued on purchased first mortgages prior to the sales date are deductible as first mortgage interest.

- **Det. 92-073, 12 WTD 131 (1992), Deposits in escrow account for third-party services to obtain first mortgage may be deducted as advance.**
- **Det. 92-267, 12 WTD 447 (1992), Retroactive corrections to international banking facility accounts may be excluded from income even though segregated after receipt.**
- **Det. 92-345, 12 WTD 501 (1992), Bank merger does not result in gain on assets held by surviving bank after merger.**
- **Det. 92-392, 12 WTD 535 (1992), Retained rights to interest in assigned first mortgage is deductible. Determination is based upon relationship to loan amount, not label**



applied to retained right. Distinguished Det. 89-474, 8 WTD 259 (1989) and Det. 90-141, 9 WTD 280-29 (1990). Overruled in part by Det. 98-218, 18 WTD 46 (1999).

- Det. 93-023, 12 WTD 575 (1993), Business that made a few sales of real estate is taxable upon interest, but was not a “financial business.” The selling of real estate on contract is neither an investment of funds, nor a financial business activity.
- Det. 93-086, 12 WTD 603 (1993), Interest from second mortgage not deductible.
- Det. 92-377, 13 WTD 222 (1994), Interest on loan to underwrite first mortgages and secured by the notes taken is not deductible as interest on first mortgages. Housing bonds are deductible if trustee issuing bond holds first mortgages and has power to foreclose on these mortgages on behalf of the bondholders.
- Det. 93-191, 13 WTD 344 (1994), points paid by student on student loan (loan fee applied against first interest payment) is not direct obligation of US government and not exempt.
- Det. 93-269ER, 14 WTD 153 (1995), Two part “financial business” test. 1. Over 5%; 2. Taxpayer’s activities similar to bank, loan or security business.
- Det. 94-092, 14 WTD 251 (1995), Gain on sales of first mortgages by mortgage broker is not deductible.
- Det. 96-046, 16 WTD 74 (1996), Holding company handling investments for a group of subsidiaries was a “financial business” and subject to tax on interest earned.
- Det. 97-178, 17 WTD 75 (1997), Interest on investments held by family-owned investment corporation represented business income as trust acted like a security business with regular and recurrent trading.
- Det. 98-328, 18 WTD 46 (1999), Sets up three-part test to determine if the funds paid represent interest: a.) There must be a legally enforceable obligation of the debtor to pay the creditor. Usury, statute of limitations, or other statute must not bar the payment. b.) The debtor must have made the payment or the payment was made on behalf of the debtor. The gain from the sale of loans is not interest. c.) The payment must not be for specific services such as a finder's fee, document preparation, title examination fees, notary fees, etc. To the extent that a fee charged to a borrower is for a combination of services and compensation for the use or forbearance of money, the fee will be allocated between service income and interest income. The mortgage broker may take interest deduction on loan origination fees that represent adjustment to yield. Loan origination fees representing adjustment to yield that are not realized until loan is paid off or sold may be deducted as first mortgage interest. Overruling, Det. 88-255, 6 WTD 123 (1988) and Det. 89-452, 8 WTD 209 (1989) as to this point. The only person entitled to the RCW 82.04.4292 deduction is the owner of the loan or investment. The owner of a loan or investment is the party who is entitled to receive the principal of the loan. Thus, upon sale or assignment of loan, in order to claim the interest deduction, the person must retain an interest in the principal of the loan.
- Det. 99-241, 19 WTD 295 (1999), Mortgage broker must bear risk of loss from loan to claim interest deduction. When loan is made in bank’s name financing the mortgage or the mortgager is required to immediately assign the loan to the bank, the broker cannot take an interest deduction for any loan origination fees paid.



Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **RCW 82.04.315 Exemptions-International banking facilities; and**
- **31 USC 3124(a).**

10. Review Recommendation:

☒ Amend

☐ Repeal

☐ Leave as is

☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

The rule should be revised to incorporate information from the ancillary documents and determinations noted in Section 3. The rule should also be revised to correct statutory citations and updated to recognize current law as explained in Section 4.

11. Manager action: Date: _____

☐ Reviewed recommendation ☐ Accepted recommendation

☐ Returned for further action

Comments: